

United States Court of Appeals
for the
District of Columbia Circuit



**TRANSCRIPT OF
RECORD**

TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia

OCTOBER TERM, 1902.

No. 1204.

156

THE CLERGYMAN'S RETIRING FUND SOCIETY OF THE
PROTESTANT EPISCOPAL CHURCH OF THE UNITED
STATES, A BODY CORPORATE, APPELLANT,

vs.

ROSLIE FERGUSON.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED APRIL 11, 1902.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1902.

No. 1204.

THE CLERGYMAN'S RETIRING FUND SOCIETY OF THE
PROTESTANT EPISCOPAL CHURCH OF THE UNITED
STATES, A BODY CORPORATE, APPELLANT,

v.s.

ROSALIE FERGUSON.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia.

THE CLERGYMAN'S RETIRING FUND SOCIETY OF THE
Protestant Episcopal Church of the United States, a }
Body Corporate, Appellant, } No. 1204.
vs.
ROSALIE FERGUSON. }

a Supreme Court of the District of Columbia.

ROSALIE FERGUSON, Plaintiff, }
vs.
ROSALIE FERGUSON, Executrix and Trustee; The National Safe Deposit, Savings and Trust Company of the District of Columbia, a Body Corporate, Trustee; The Trustees of the Disabled Clergy Fund and of the Episcopal Fund of the Protestant Episcopal Church in the State of Washington, a Body Corporate, and The Clergyman's Retiring Fund Society of the Protestant Episcopal Church of the United States, a Body Corporate, Defendants. } No. 21524. In Equity.

UNITED STATES OF AMERICA, } ss:
District of Columbia, }

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Bill for Construction of Will.*

Filed June 26, 1900.

In the Supreme Court of the District of Columbia.

ROSLIE FERGUSON, Plaintiff,
vs.

ROSLIE FERGUSON, Executrix and Trustee ;
The National Safe Deposit, Savings and
Trust Company of the District of Columbia,
a Body Corporate, Trustee ; The Trustees
of the Disabled Clergy Fund and of the
Episcopal Fund of the Protestant Episco-
pal Church in the State of Washington, a
Body Corporate, and The Clergyman's Re-
tiring Fund Society of the Protestant Epis-
copal Church of the United States, a Body
Corporate, Defendants.

Equity. No. 21524.

To the supreme court of the District of Columbia, holding an equity court:

The plaintiff respectfully showeth unto the court as follows :

1. She is a citizen of the United States and a resident of the District of Columbia, and files this bill in her own right as the next of kin and heir-at-law of Blanche Lacey, deceased.

2. The defendant Rosalie Ferguson is a citizen of the United States and a resident of the District of Columbia, and is sued as executrix and trustee by virtue of the provisions of the last will and testament of Blanche Lacey deceased. The National Safe Deposit, Savings and Trust Company of the District of Columbia is a body corporate duly organized under the laws of the Congress of

the United States having its principal place of business in the District of Columbia, and is sued as trustee under the last will and testament of the said Blanche Lacey, deceased. The defendant The Trustees of the Disabled Clergy Fund and of the Episcopal Fund of the Protestant Episcopal Church in the State of Washington, is a charitable and religious corporation organized under the laws of the State of Washington, and is sued in its own right as a beneficiary under the aforementioned will. The defendant, The Clergyman's Retiring Fund Society of the Protestant Episcopal Church of the United States, is a charitable and religious corporation organized under the laws of the State of New York and is sued in its own right as a beneficiary under the aforesaid will.

3. Blanche Lacey, a citizen of the District of Columbia, which was the place of her last domicile, departed this life on the 12th day of April, 1897, leaving as her next of kin and heirs-at-law, her sister the plaintiff Rosalie Ferguson and her sister Kate Ferguson. At the time of her death she was a widow. She left a last will and tes-

tament by her made on the 15th day of March, 1897, which was duly admitted to probate and record in the supreme court of the District of Columbia holding a special term for orphans' court business, on the 21st day of November, 1899. A certified copy of the said will is annexed hereto marked Exhibit A and is prayed to be read as a part hereof. By the terms of the said will, all of the property of the aforesaid Blanche Lacey was left to the plaintiff Rosalie Ferguson and to her sister Kate Ferguson and to the survivor of them

for life, with full power to sell and dispose of the same and
3 invest the proceeds. The said Rosalie Ferguson and her sister

Kate Ferguson were nominated as executrices of the said will and testament. The said Kate Ferguson departed this life on the 23rd day of October, 1898, leaving the plaintiff as her sole heir-at-law and next of kin, before the said will was admitted to probate and record. Letters testamentary were thereafter granted to the aforesaid plaintiff on the 21st day of November, 1899, who duly qualified as executrix of the said last will and testament.

4. At the time of her death the before-mentioned Blanche Lacey was possessed of personal property to the value of about \$500 but left debts amounting to \$1200 which were paid by the plaintiff. Accordingly there is no personal property to be distributed. She also left real estate situated in the city of Washington, District of Columbia, of the estimated value of \$30,000 consisting of two houses numbered respectively 2001 I street, northwest, of the estimated value of \$20,000, and 2222 Pennsylvania avenue northwest, of which the estimated value is \$10,000. According to the terms of the said last will and testament of the said Blanche Lacey, upon the death of the said plaintiff, the aforesaid property or its proceeds are devised to the defendant The National Safe Deposit Savings and Trust Company of the District of Columbia in trust to sell and dispose of the same, and from the proceeds of the said sale or sales to pay one-quarter thereof to the defendant The Trustees of the Disabled Clergy Fund and of the Episcopal Fund of the Protestant Episcopal Church in the State of Washington, and three-quarters thereof to the defendant The Clergyman's Retiring Fund Society of the Protestant Episcopal Church of the United States. The plaintiff avers that

4 the said devise to the National Safe Deposit, Savings and Trust Company of the District of Columbia in trust as aforesaid is

void and of no effect since she alleges that both The Trustees of the Disabled Clergy Fund and of the Episcopal Fund of the Protestant Episcopal Church in the State of Washington and the defendant The Clergyman's Retiring Fund Society of the Protestant Episcopal Church of the United States, are in effect religious orders and have for their sole object the support and maintenance of aged disabled and retired clergymen of the Protestant Episcopal Church, and hence the said devise is for the support, use and benefit of and in trust for a religious order or denomination, and for a minister and preacher of the gospel as such. The said testatrix Blanche Lacey died within the period of one calendar month after the execution of the aforesaid will containing the last-mentioned devise.

5. The plaintiff is the sole heir-at-law and next of kin as aforesaid of the said Blanche Lacey and is in actual possession of all of the aforementioned property, and she avers that in the event of the said last-mentioned devise being void, she is entitled to all of the property left by the said Blanche Lacey at her death as her sole heir-at-law and next of kin, and that her right to the whole property given her by the said will as a life tenant has merged into her title to the same as heir-at-law and next of kin, and she further avers that the above-mentioned devise to the National Safe Deposit Savings and Trust Company of the District of Columbia in trust as above set forth operates as a cloud upon her title to the aforesaid property of the said Blanche Lacey, deceased.

5 Wherefore the plaintiff prays as follows:—

1. That the court construe the aforesaid last will and testament of Blanche Lacey, deceased.

2. That the court determine that the said devise to the National Safe Deposit, Savings and Trust Company of the District of Columbia in trust as aforesaid is void and of no force and effect.

3. That the said court determine that the plaintiff is entitled as sole heir-at-law and next of kin to all of the property of the said Blanche Lacey, deceased.

4. That the said devise to the National Safe Deposit, Savings and Trust Company of the District of Columbia in trust as aforesaid, be declared to operate as a cloud upon the title of the said plaintiff.

5. That the said The National Safe Deposit, Savings and Trust Company of the District of Columbia as trustee, and the said The Trustees of the Disabled Clergy Fund and of the Episcopal Fund of the Protestant Episcopal Church in the State of Washington, and the said The Clergyman's Retiring Fund Society of the Protestant Episcopal Church of the United States, be perpetually enjoined from claiming or asserting any title to any of the above-described property by virtue of the last will and testament of the said Blanche Lacey, deceased.

6. For other and further relief.

The defendants to this bill are, Rosalie Ferguson, executrix and trustee, The National Safe Deposit, Savings and Trust Company of the District of Columbia, a body corporate, trustee, The Trustees of the Disabled Clergy Fund and of the Episcopal Fund of the Protestant Episcopal Church in the State of Washington, a body corporate, and The Clergyman's Retiring Fund Society of the Protestant Episcopal Church of the United States, a body corporate.

ROSALIE FERGUSON.

R. ROSS PERRY & SON,
Attorneys for Plaintiff.

I solemnly swear that I have read the foregoing bill by me subscribed and know the contents thereof; that the matters therein stated of my own knowledge are true and those stated upon information and belief I believe to be true.

ROSALIE FERGUSON.

Subscribed and sworn to before me this 26th day of June, A. D. 1900.

J. R. YOUNG, *Clerk,*
By R. J. MEIGS, JR., *Ass't Cl'k.*

7

EXHIBIT A TO BILL.

Filed June 26, 1900.

In the Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

DISTRICT OF COLUMBIA, *To wit:*

The United States of America to all persons to whom these presents shall come, Greeting:

Know ye, that the last will and testament of Blanche Lacey of the District of Columbia, deceased, hath in due form of law been exhibited, proved, and recorded in the office of the register of wills for the District of Columbia, a copy of which is to these presents annexed, and administration of all the goods, chattels and credits of the deceased, is hereby granted and committed unto Rosalie Ferguson the executrix by the said will appointed.

Witness, Charles C. Cole, justice holding the special term of the said supreme court for orphans' court business, this 22nd day of December, in the year of our Lord one thousand eight hundred and ninety-nine and of the Independence of the United States the one hundred and twenty-fourth.

Test:

[SEAL.]

LOUIS A. DENT,
Register of Wills for the District of Columbia.

I, Rosalie Ferguson, do swear that I will well and truly administer the goods, chattels, personal estate, and credits of Blanche Lacey, late of the District of Columbia, deceased, to the best of my knowledge, according to law, and will give a just account of my administration when thereto I shall be lawfully called. So help me God.

ROSLIE FERGUSON.

Sworn and subscribed to before me, this 22nd day of December, A. D. 1899.

Test:

LOUIS A. DENT,
Register of Wills.

In the name of the Father, and of the Son and of the Holy Ghost—from whom cometh every good and perfect gift—Amen.

I Blanche Lacey of the city of Washington in the District of Columbia, widow of Robert Armistead Lacey M. D. deceased being of sound and disposing mind memory and understanding do make

publish and declare this my last will and testament hereby revoking any and all other wills by me at any time heretofore made.

First. I give all of my property of any and every name and nature and wherever situated—that may remain after the payment of my just debts and funeral and testamentary expenses—to my sisters Kate Ferguson and Rosalie Ferguson for and during their lives and the life of the survivor of them—and in order that they may have the greatest benefit and advantage thereof consistent with the preservation of the bulk of my said estate I authorize and empower them and the survivor of them—to sell either of my two houses in the said city of Washington whenever in their or her judgment it may be advisable so to do, at either public or private sale and to make, execute and deliver a deed or deeds of conveyance thereof—And in the event of such sale I direct them or the survivor of them (as the case may be) to invest the net proceeds—after payment of the expenses of such sale and of all liens and incumbrances upon the other of said houses—and to change the investment from time to time as to them or her may seem wise and prudent.

10 It is my intention that my said sisters and the survivor of them shall have and enjoy the entire net income of my estate herein devised and bequeathed during their lives. Second—Upon the death of both of my said sisters I give devise and bequeath all of my said estate and property then remaining to "The National Safe Deposit, Savings and Trust Company, of the District of Columbia," a corporation chartered by act of the Congress of the United States—in and upon the trusts following to wit:

As soon as may be to sell and dispose of the whole of said estate and property, and convert the same into money and after paying the necessary expenses of the execution of these trusts, to pay over the net proceeds of the sale of said property and any rents or income thereof that may have come into the hands of said trustee and distribute the same as follows:

One-fourth thereof to the corporation known as "The Trustees of the Disabled Clergy Fund and of the Episcopal Fund of the Protestant Episcopal Church in the State of Washington" to be divided between the said two funds.

The corporation and funds intended being those created for the purposes of the missionary jurisdiction of Olympia which at this time comprises all that part of the State of Washington west of the Cascade range of mountains and of which the Right Reverend William M. Barker D. D. is now missionary bishop and—

Three-fourths thereof to the Clergyman's Retiring Fund Society of the Protestant Episcopal Church in the United States which society was incorporated under the laws of the State of New York in the year of our Lord 1896,

Third. I nominate, constitute and appoint my sisters Kate Ferguson and Rosalie Ferguson to be executrices of this my will and it is my wish that they shall not be required to give bonds or
11 security as such.

In testimony of all which I have hereunto subscribed my

name and set my seal at the city of Washington this 15th day of March, in the year of our Lord eighteen hundred and ninety-seven.

BLANCHE LACY. [SEAL.]

Signed, sealed, published and declared by the said testatrix as and for her last will & testament in our presence, who at her request and in her presence and in the presence of each other have hereto subscribed our names as witnesses this 15th day of March, A. D 1897.

GIST BLAIR,

1651 Pennsylvania Ave., Washington, D. C.

THOMAS R. JONES,

1216 Conn. Ave., Washington, D. C.

CHARLES E. NYMAN,

1515 "S" Street N. W.

12 DISTRICT OF COLUMBIA, *To wit:*

On the 9th day of July, 1897 came Miss Rosalie Ferguson and made oath on the Holy Evangelists of Almighty God, that she does not know of any will or codicil of Blanche Lacey late of said District, deceased, other than the foregoing instrument of writing dated March 15th, 1897 and that she found the same among her private papers in her room at No. 2222 Pennsylvania avenue, after her death and said Blanche Lacey died on or about the 12th day of April, 1897.

ROSALIE FERGUSON,

No. 2222 Penna. Ave.

Sworn to and subscribed before me,

M. J. GRIFFITH,

[SEAL]

Notary Public for the District of Columbia.

Supreme Court of the District of Columbia, Holding a Special Term
for Orphans' Court Business.

DISTRICT OF COLUMBIA, *To wit:*

AUGUST 13, 1897.

This day appeared Gist Blair and Charles E. Nyman, two of the subscribing witnesses to the foregoing last will and testament of Blanche Lacey, late of the District of Columbia, deceased, and severally made oath on the Holy Evangelists of Almighty God, that they did see the testatrix therein named sign this will; that she 13 published, pronounced, and declared the same to be her last will and testament; that at the time of so doing she was, to the best of their apprehension, of sound and disposing mind, and capable of executing a valid deed or contract; and that their names as witnesses to the aforesaid will were signed in the presence and at the request of testatrix and in the presence of each other and of the other subscribing witness thereto.

Test:

M. J. GRIFFITH,

Acting Register of Wills.

Supreme Court of the District of Columbia, Holding a Special Term
for Orphans' Court Business.DISTRICT OF COLUMBIA, *To wit:*

AUGUST 19, 1899.

This day appeared Thomas R. Jones one of the subscribing witnesses to the foregoing last will and testament of Blanche Lacey, late of the District of Columbia, deceased, and solemnly made oath on the Holy Evangelists of Almighty God, that he did see the testatrix therein named sign this will; that she published, pronounced and declared the same to be her last will and testament; that at the time of so doing she was, to the best of his apprehension, of sound and disposing mind, and capable of executing a valid deed or contract; and that his name as witness to the aforesaid will was signed in the presence and at the request of testatrix and in the presence of the other subscribing witnesses thereto.

Test:

M. J. GRIFFITH,
*Acting Register of Wills.*14 In the Supreme Court of the District of Columbia, Special
Term for Orphans' Court Business.

(I. R. stamp.)

DISTRICT OF COLUMBIA, *To wit:*

I, Louis A. Dent, register of wills for the District of Columbia, and *ex officio* clerk of the said special term for orphans' court business, do hereby certify that the foregoing is a true copy of the original will of Blanche Lacey, deceased, and the probates thereto, filed and recorded in the office of the register of wills for the District of Columbia aforesaid; and also that the said will after having been proven by the witnesses whose names appear in the foregoing probates, was, by order of the supreme court of the District of Columbia, holding a special term for orphans' court business, duly admitted to probate and record on the 21st day of November, A. D. one thousand eight hundred and ninety-nine.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said supreme court, special term for orphans' court business, this 17th day of January, anno Domini 1900.

[SEAL.]

LOUIS A. DENT.

15

Answer of National Safe Deposit, &c., Co.

Filed February 13, 1901.

In the Supreme Court of the District of Columbia.

ROSALIE FERGUSON, Complainant,

vs.

ROSALIE FERGUSON, Executrix and Trustee; The National Safe Deposit, Savings and Trust Company of the District of Columbia, a Body Corporate, Trustee; The Trustees of the Disabled Clergy Fund and of the Episcopal Fund of the Protestant Episcopal Church in the State of Washington, a Body Corporate, and The Clergyman's Retiring Fund Society of the Protestant Episcopal Church of the United States, a Body Corporate, Defendants.

Equity. No. 21534.

The separate answer of the defendant, The National Safe Deposit, Savings and Trust Company of the District of Columbia, a body corporate, trustee, to the bill of complaint filed in the above-entitled cause.

The defendant, The National Safe Deposit, Savings and Trust Company of the District of Columbia, reserving to itself the benefit of all rights of exception and objection to the defects in the bill of complaint in this cause, respectfully showeth unto the court as follows:

1. On information and belief, this defendant admits the averments of fact contained in the first paragraph of the said bill.

2. It admits that the defendant, The Trustees of the Disabled Clergy Fund and of the Episcopal Fund of the Protestant

16 Episcopal Church in the State of Washington, is a charitable and benevolent corporation existing under and by virtue of the laws of the State of Washington and admits that it is sued in its own right as a beneficiary under the last will and testament of Blanche Lacey, deceased. It does not know whether it is a religious corporation, and, therefore, neither admits nor denies the averments in the said bill to that effect, but requires strict proof thereof. It admits that the defendant, The Clergyman's Retiring Fund Society of the Protestant Episcopal Church of the United States, is a charitable and benevolent corporation duly created under the laws of the State of New Jersey and is sued in its own right as a beneficiary under the aforementioned will. As to the averments in the second paragraph of the said bill that the said corporation is a religious corporation, this defendant says that it has no knowledge of the said fact and, therefore, neither admits nor denies the same, but

calls for strict proof thereof. It admits the averments in the said second paragraph of the said bill as to the defendant, Rosalie Ferguson and as to itself.

3. On information and belief, this defendant admits the allegations contained in the third paragraph of the said bill and asks leave to refer, if necessary, to the originals of the records referred to therein.

4. For answer to the allegations contained in the fourth paragraph of the said bill except as to those otherwise referred to in this answer, this defendant says that it has no knowledge of the facts therein stated, and, therefore, neither admits nor denies the same, but calls for strict proof thereof so far as the same are material.

5. On information and belief, this defendant admits that the plaintiff is the sole heir-at-law and next of kin of Blanche Lacey,
17 deceased, and that she is in actual possession of all of the property referred to. As to the other matters contained in the fifth paragraph of the said bill, this defendant has no knowledge thereof and, therefore, neither admits nor denies the same but calls for strict proof in so far as the said allegations may be material.

THE NATIONAL SAFE DEPOSIT, SAVINGS
& TRUST COMPANY OF THE DISTRICT
OF COLUMBIA.

T. R. JONES, *President.*

CITY OF WASHINGTON,
District of Columbia, } ss:

I, Thomas R. Jones, of the District aforesaid, being *duly* first duly sworn, do depose and say that I am the president of the National Safe Deposit, Savings and Trust Company, a body corporate, and am duly authorized to make oath on its behalf to the foregoing answer, that I have read the foregoing answer by it subscribed and know the contents thereof; that the statements therein made upon personal knowledge are true and that those made upon information and belief, I believe to be true.

THOMAS R. JONES.

Subscribed and sworn to before me this 13th day of February,
A. D. 1901.

WILLARD H. MYERS,
Notary Public. [SEAL.]

18

Answer of Trustees of Disabled Clergy Fund.

Filed July 19, 1901.

In the Supreme Court of the District of Columbia.

ROSALIE FERGUSON, Plaintiff,
vs.
 ROSALIE FERGUSON, Executrix & Trustee, *et al.*, Defendants. } Equity No. 21524.

Answer of the defendant The Trustees of the Disabled Clergy Fund and of the Episcopal Fund of the Protestant Episcopal Church in the State of Washington, a body corporate.

The defendants, The Trustees of the Disabled Clergy Fund and of the Episcopal Fund of the Protestant Episcopal Church in the State of Washington, answering the bill of complaint filed in the above-entitled cause by Rosalie Ferguson, admit all the allegations of fact contained therein, but neither admit nor deny the legal inferences stated therein, nor the legal effect of matters of fact therein stated, but ask that the court do forthwith hear and determine the said cause.

THE TRUSTEES OF THE DISABLED CLERGY
 FUND AND OF THE EPISCOPAL FUND OF
 THE PROTESTANT EPISCOPAL CHURCH IN
 THE STATE OF WASHINGTON,
 By PHÆNIX BABCOCK, *Secretary.*

I do solemnly swear that I am the secretary of the Trustees of the Disabled Clergy Fund and of the Episcopal Fund of the Protestant Episcopal Church in the State of Washington, and that as such officer I have read the foregoing answer subscribed by the said
 19 Trustees of the Disabled Clergy Fund and of the Episcopal Fund of the Protestant Episcopal Church in the State of Washington, and know the contents thereof; that the matters therein stated of its own knowledge are true and those stated upon information and belief I believe to be true.

PHÆNIX BABCOCK.

Witnesses:

B. A. MOORE,
 GEORGE W. FOGG.

Subscribed and sworn to before me this 13th day of July, 1900.
 Witness my hand and seal.

[SEAL.]

GEORGE W. FOGG,
*A Notary Public in and for the State of Washington,
 Residing in Tacoma, in said State.*

20 *Separate Answer of the Clergyman's Retiring Fund Society.*

Filed December 22, 1900.

In the Supreme Court of the District of Columbia.

ROSALIE FERGUSON, Plaintiff,

vs.

ROSALIE FERGUSON, Executor and Trustee ;
The National Safe Deposit, Savings and
Trust Company of the District of Colum-
bia, a Body Corporate, Trustee ; The
Trustees of the Disabled Clergy Fund
and of the Episcopal Fund of the Prot-
estant Episcopal Church in the State
of Washington, a Body Corporate, and
The Clergyman's Retiring Fund Society
of the Protestant Episcopal Church of
the United States, a Body Corporate,
Defendants.

In Equity. No. 21524.

The separate answer of The Clergyman's Retiring Fund Society of the Protestant Episcopal Church of the United States, (a body corporate), one of the defendants to the bill of complaint in the above-entitled cause, reserving all right of exception and objection to defects in the said bill, respectfully shows to the court as follows :

1. On information and belief this defendant admits the averments of fact contained in the first paragraph of the said bill.

2. As to the averments contained in the second paragraph of said bill which relate to this defendant it says that it is a charitable and benevolent corporation duly created, organized and existing under and by virtue of the laws of the State of New York, and admits that it is sued in its own right as a beneficiary under the last will of Blanche Lacey, deceased, but specifically denies that it is a religious corporation as is averred.

As to all other averments contained in said paragraph, this defendant says that it is without knowledge sufficient to enable it to either admit or deny the same, and if the same be material calls for strict proof thereof.

3. On information and belief this defendant admits the allegations contained in the third paragraph of said bill, but craves leave to refer if necessary to the originals of the records referred to therein.

4. For answer to the allegations contained in the fourth paragraph of the said bill which relate to this defendant, defendant specifically denies that it is in effect a religious order and has for its sole object the support and maintenance of aged, disabled and retired clergymen of the Protestant Episcopal church, but on the contrary says that is a mutual benefit association, duly incorporated under the

provisions of a general "Act for the incorporation of benevolent, charitable, scientific and missionary societies," and a certain other general "Act relating to membership corporations," the same constituting chapter 43 of the General Laws of the State of New York.

This defendant further specifically denies that the bequest
 22 to it here in question, is for the support, use and benefit of and
 in trust for a religious order or denomination, and for a minister and preacher of the gospel as such but says that it is advised by counsel that the legal construction of said will and of the devise therein as set forth in the said paragraph is matter and conclusion of law which it is not called upon to answer. This defendant is without knowledge and can neither admit nor deny the other allegations contained in the said paragraph, but if the same be material, calls for strict proof thereof.

5. On information and belief this defendant admits that the complainant is the sole heir-at-law and next of kin of said Blanche Lacey, deceased, and that she is in actual possession of all of the property referred to, but further says that it is advised by counsel that the remaining averments contained in paragraph five of complainant's bill of complaint, are matters and conclusions of law which this defendant is not called upon to answer.

6. Further answering said bill of complaint, this defendant avers that it is a charitable and mutual benefit association, duly incorporated, organized and existing, as aforesaid, under the laws of the State of New York, and authorized in law to take and hold the money bequeathed to it by the will of the said Blanche Lacey, deceased, for the purposes therein specified.

8. This defendant joins in the prayer of the complainant for the construction of the will, and submits that thereupon it will appear that the aforesaid bequest to this defendant is valid, and that it is
 23 entitled in law to accept, recover, hold and administer the same for the objects and purposes specified in said will and the charter of this defendant.

Wherefore, &c. &c.

CLERGYMAN'S RETIRING FUND SOCIETY OF
 THE PROTESTANT EPISCOPAL CHURCH
 OF THE UNITED STATES,
 By J. VAN VECHTEN OLCOTT, *Secretary.*

F. D. MCKENNEY,
 WM. HITZ, *Solicitors.*

STATE OF NEW YORK, }
Borough of Manhattan, }
 s-:

I, J. Van Vechten Olcott, of the city and State of New York, being first duly sworn deposes and says that I am the secretary of the Clergymen's Retiring Fund Society of the Protestant Episcopal Church of the United States, a body corporate, duly authorized to make oath on its behalf to the foregoing answer. I have read the said foregoing and annexed answer and know the contents thereof

14 CLERGYMAN'S RETIRING FUND SOC. OF THE PROTESTANT

and the statements therein contained are true to the best of my knowledge, information and belief.

J. VAN VECHTEN OLCOTT.

Sworn to before me this 20th day of December, A. D. 1900.

G. L. F. ROHAN,
Notary Public, N. Y. Co.

[SEAL.]
24 STATE OF NEW YORK, } ss:
County of New York, }

I, William Sohmer, clerk of the county of New York, and also clerk of the supreme court for the said county, the same being a court of record do hereby certify, that G. L. F. Rohan, before whom the annexed deposition was taken, was, at the time of taking the same, a notary public of New York, dwelling in said county, duly appointed and sworn, and authorized to administer oaths to be used in any court in said State, and for general purposes; that I am well acquainted with the handwriting of said notary, and that his signature thereto is genuine, as I verily believe.

In testimony whereof, I have hereunto set my hand and
[SEAL.] affixed the seal of the said court and county, the 20th day
of December, 1900.

WM. SOHMER, *Clerk.*

(I. R. stamp.)

25 *Testimony of Rosalie Ferguson.*

Filed August 20, 1901.

In the Supreme Court of the District of Columbia.

ROSALIE FERGUSON, Complainant, }
vs. } Equity. No. 21524.
ROSALIE FERGUSON, Executrix, et al. }

WASHINGTON, D. C., August 14, 1901.

Met pursuant to agreement at the office of R. Ross Perry & Son, attorneys, in the Fendall building, Washington, D. C., to continue the taking of testimony on behalf of the complainant in the above-entitled cause, due notice having been given to all parties.

Present: In behalf of the complainant, R. Ross Perry, Jr., Esq. James W. Greer, Esq., in behalf of the safe deposit Co. Fred'k D. McKenney, Esq., in behalf of the Clergyman's Retiring Fund Society of the Protestant Episcopal Ch'rch in the United States.

(Owing to the unavoidable absence of John Sweeney, Esq., the examiner appointed by the court to take testimony in this cause, it is agreed and stipulated by counsel that Gerald Van Casteel, an examiner of this honorable court shall act as examiner and take testimony for the said Sweeney.)

Whereupon, Miss ROSALIE FERGUSON, party in the above-entitled cause being duly sworn, deposes and says as follows:

26 By Mr. PERRY:

Q. Will you please state your full name? A. Rosalie Ferguson.

Q. Where do you live, Miss Ferguson? A. 2222 Pennsylvania avenue, northwest, Washington, D. C.

Q. You are a citizen of the District of Columbia? A. Yes, sir.

Q. How were you related to Mrs. Blanche Lacey, who is now deceased? A. She was my sister.

Q. At the time of her death what relatives did she have besides yourself? A. Only myself and another sister.

Q. What was the name of the other sister? A. Catherine Ferguson.

Q. Is she dead? A. Yes, sir.

Q. Was she married or unmarried at the time of her death? A. Unmarried.

Q. Did you ever have any other brothers or sisters? A. Yes, sir. I am the youngest of eleven, but they are all dead.

Q. Did they all die before or after Mrs. Lacey? A. All but one died before she did.

Q. And which one was that? A. Catherine Ferguson, my sister.

Q. Do you recollect when Miss Catherine died? A. Twenty-third of October, 1898.

Q. Where did Mrs. Lacey live? A. Why, she was born in Albany, and then after that, with the exception of two or three years, we lived in Washington, until the time of her death.
27

Q. So Washington was her home? A. Yes, sir, Washington was her home.

Q. When did Mrs. Lacey die? A. April 12, 1897.

Q. You are the executrix of the will of Mrs. Lacey? A. I am, yes sir.

Q. Have any claims against Mrs. Lacey been filed in court?

(This question is objected to on the ground that it is immaterial and irrelevant and not responsive to the pleadings or any issue of the case, and this objection will apply to all succeeding questions asked of this witness on the same lines.)

A. I don't think any have been, I don't know of any.

Q. What, if any, personal property did Mrs. Lacey leave at the time of her death? A. She left a set of walnut bed-room furniture, including a book-case, also ten paintings, thirty engravings, one gentleman's gold watch, and a very simple widow's dress was all she had. All this personal property I value at about one hundred dollars. My father and mother both died without making any will, so we never divided any of the household furniture or silver, but as we three sisters made our homes together, Mrs. Lacey when she made her will said she left out all her household furniture, &c., because she thought she shared them with us and did not care to make a will in regard to them.

- Q. What would be the value of the silver and furniture that your mother and father left? A. Twelve hundred dollars in all.
- 28 Q. Have you an account of the amounts that you expended on Mrs. Lacey after her death? A. I have it down here itemized.

(Witness produces a statement which is offered in evidence and marked by the examiner "Exhibit A, Rosalie Ferguson.")

- Q. Have you any vouchers as well? A. Yes, sir, I have them here.

(Witness produced vouchers which are offered in evidence and marked "Rosalie Ferguson, Exhibit B")

- Q. Did you pay those sums of money before or after you were appointed executrix for Mrs. Lacey? A. Well, I paid them before the will was probated.

- Q. You have never claimed any of it from her estate? A. No, never.

- Q. And it is not your intention to do so? A. No, it is not.
Q. Did any of these brothers and sisters who died before Mrs. Lacey leave any children? A. No, they were all unmarried.

Cross-examination.

By Mr. MCKENNEY:

- Q. You say that you advanced the money to pay these claims from your own personal estate? A. Well, part of it was from my own personal estate and part of it from the income of one of these houses; it was her income and mine.

- Q. Why did you feel called upon to do that? A. Well, in the family we have never had any debts for anything at all except repairs to houses and that kind of thing. We have always paid cash down; my sister herself was very particular about that, and
29 as I stated, the work for repairs was ordered by her, but it was not finished until after her death, so I paid all bills as fast as I could conveniently do it. I did not know then that any trouble of this kind would be raised. The trust company and my own lawyer told me there would be no difficulty in my making a will and carrying out my sister's intentions, and for two years I never supposed there would be any question as to the sale or reinvestment of the property, until the question was raised by the National Safe Deposit Company of this city.

- Q. You say that you advanced this money and paid these debts prior to the probate of the will? A. Yes, sir.

- Q. You did that voluntarily, I suppose? A. Yes, sir, voluntarily.

- Q. And of your own free will? A. Yes, sir, entirely.

- Q. And I understand that you did this under the advice of counsel, that this will was of such character as enabled you to do as you chose with the property itself? A. Yes, sir.

- Q. Have you made any statement of account to the orphans' court? A. Not unless Mr. Perry has done so.

Q. And you have made no report to the orphans' court of these outstanding debts which you settled ? A. Well, I made a statement to Mr. Perry, and he can tell you. I have never done anything except what has been done by Mr. Perry.

Q. So far as you know then there has been no report made to the orphans' court as to the facts that there were debts—of the 30 fact of these debts which you settled with personal funds. A.

Well I made a statement to Mr. Perry, and I don't know whether he made it to the orphans' court or not.

Q. You say that this paper which has been marked "Rosalie Ferguson, Exhibit A," contains a statement of the debts of the estate which you have settled ; and that these vouchers marked "Rosalie Ferguson, Exhibit B" correspond to these statements and that the money with which you settled these claims was advanced out of your own personal funds, and the income from these houses themselves ? A. Yes, sir.

Q. These bills for repairs were for work ordered by Mrs. Lacey, and were not completed at the time of her death. The repairs were for these two houses themselves, I believe ? A. Yes, sir, more especially for one of them, General Hawkins had rented the house and it was to make some repairs that he wanted, and she had ordered the work, and it was not finished at the time of her death.

Q. And the other of these houses was occupied by you and your sister ? A. Yes sir, I am still living in that house.

Q. And that is 2222 Pennsylvania avenue ? A. Yes, sir.

Q. And the work for which these expenses were incurred was principally upon the other house. A. Yes, sir, on the house 2001 I street northwest.

31 Redirect examination.

By Mr. R. Ross PERRY, Jr. :

Q. What real estate did Mrs. Lacey leave at the time of her death ? A. 2001 I street, and 2222 Pennsylvania avenue, northwest, Washington, D. C.

Q. And you have been in possession of both of these houses since the time of her death ? A. Yes sir, we have.

R. Ross PERRY, Jr. : I offer in evidence a certified copy of the articles of incorporation of the Trustees of the Disabled Clergy Fund and of the Episcopal Fund of the Protestant Episcopal Church in the State of Washington. (Marked "Rosalie Ferguson C.")

I also offer in evidence a copy of canon relative to the Disabled Clergy Fund adopted at the missionary convocation of the jurisdiction of Washington, held May 23, 24 and 25, 1888, in Seattle, Washington, (marked "Rosalie Ferguson D.")

ROSLIE FERGUSON.

Subscribed and sworn to before me this 19th day of August, A. D. 1901.

GERALD VAN CASTEEL,
Examiner in Chancery.

18 CLERGYMAN'S RETIRING FUND SOC. OF THE PROTESTANT

32 I hereby certify that the foregoing testimony of Rosalie Ferguson was taken down in shorthand by me from the testimony of said witness at the time and place specified in the caption hereof; that said shorthand notes were faithfully transcribed by me and the transcript read over by said witness who, having first been duly sworn, thereupon subscribed the same. I further certify that I am not of counsel for any party to this cause nor in any manner interested therein.

GERALD VAN CASTEEL,
Examiner in Chancery.

33 EXHIBIT "ROSALIE FERGUSON, A."

Mrs. Blanche Lacey died April 12, 1897.

Property Left by Her.

House & lot # 2001 I St. Insured.....	\$10,000.
House & lot # 2222 Penn. Ave. "	6,000.
One set of bed-room furniture walnut and one book-case—	
Paintings 10 } Insurance.....	75.00
Engravings 30 }	
One gentleman's gold watch.	

Dress.—A very simple widow's dress at all times.

Bills Rendered and Paid by Myself.

Funeral expenses.....	\$130.00
Physician's bill.....	50.00
Taxes.....	169.45
Wood & Coal. J. M. Dove.....	68.73
Loan from Chas. P. Thompson.....	609.59

The following bills were for work ordered by her, and not completed at the time of her death.

Chas. Lockhead, plumber.....	27.07
John Moran "	61.55
R. W. Henderson.....	9.35
Chas. S. Denham builder.....	16.95
James Luskey, painter.....	104.50
	<hr/>
	\$1247.19

I have no knowledge of any other debts contracted by her, and no other accounts except the above have been presented to me for settlement.

Houses & furniture insured.

Taxes paid to date.

34 EXHIBIT "ROSALIE FERGUSON, B" (12 VOUCHERS).

Received from Miss Rosalie Ferguson the sum of *six hundred and nine dollars and fifty-nine cents*, (\$609.59), in full payment of money loaned, without interest, to Mrs. Blanche Lacey, as follows:

20th July, 1895.....	\$150.00
14th Oct. 1895.....	316.00
19th Oct. 1896.....	35.00
12th Feb. 1897.....	108.59
Total.....	\$609.59

C. P. THOMPSON.

Washington, D. C., November 22, 1899.

WASHINGTON, D. C., *July* 15, 1897.

Mrs. Ferguson, 2222 Pa. Ave., at 2001 I N. W., to Richard W. Henderson, Dr.

Telephone 970.

To preparing walls of vestibule.....	\$1.25
" 6 pcs. paper C. C. & HgC. 60c.....	3.60
" time repairing parlor, "painter".....	3.50
" paperhanger's time repairing.....	1.00
	<hr/>
	\$9.35

Paid.

R. W. HENDERSON,
Per W. B. W.

35

WASHINGTON, D. C., *June 4th, 1897.*

Mrs. Sue Lacey, deceased; Rosalie Ferguson, executrix, to Chas. Lockhead Dr., practical plumber and gasfitter, No. 3027 M street N. W.

May 11.	To 2 single swing brackets	$\frac{12}{60}$	1 hall globe	1.00.....	2.20
" "	" 1 double " "	.75	1 stiff globe	.50.....	1.25
" "	24 gas tips	$\frac{6}{24}$.	6 gas pillars	$\frac{15}{27}$75
" "	8 hours' time for plumber & helper	75.....			6.00
21.	3 stiff brackets	$\frac{15}{50}$.	3 gas globes	$\frac{75}{25}$	2.25
" "	4 hours' time for plumber & helper	75.....			3.00
22.	3 double swing	$\frac{225}{75}$.	2 stiff do.	$\frac{100}{50}$	3.25
" "	8 gas globes	$\frac{200}{25}$,	8 globe-holders	$\frac{6}{8}$	2.64
" "	5 hours' time for plumber & helper	75.....			3.75
June 1.	Repairing yard closet.....				
" "	2 $\frac{1}{2}$ hours' time for plumber & helper	$\frac{188}{75}$	1 $\frac{1}{2}$ ft. of plated chain	10.....	1.98
					<hr/> $\$27.07$

July 3rd, 1897.
Rec'd paym-nt,

CHAS. LOCKHEAD,
Per C. W.

20 CLERGYMAN'S RETIRING FUND SOC. OF THE PROTESTANT

36 WASHINGTON, D. C., Dec. 31st, 1896.

Mrs. B. Lacey to Chas. S. Denham, Dr., carpenter and builder, No. 820 19th street northwest.

1896.

Oct. 5.—To repair roof & cornice, 2001 1st..... \$16.95.

August 13th, 1898.

Rec'd payment,

CHAS. S. DENHAM.

WASHINGTON, D. C., Sept. 1, 1897.

Miss Ferguson to Dr. N. S. Lincoln, Dr.

To professional services rendered :

To bal. of acc't..... \$25.00

\$25.00.

Received payment,

N. S. LINCOLN.

Office and residence, No. 1514 H street, between 15th and 16th.

Office hours: { 8.30 to 9.30 a. m.
 { 1.30 to 4.30 p. m.
 { Sundays, 8.30 to 9.30 a. m. only.

37 WASHINGTON, D. C., July 1, 1897.

M Estate of Mrs. Lacey, deceased, 2222 Pa. Ave., to Dr. N. S. Lincoln, Dr.

To professional services rendered :

Jan'y 1 to date..... \$50.00

Aug. 12. By cash on a/c cr..... 25.00

Balance..... \$25.00

\$50.00.

Received payment,

Office hours: { 8.30 to 9.30 a. m.
 { 1.30 to 4.30 p. m.
 { Sunday's 8.30 to 9.30 only.

WASHINGTON, D. C., April 15, 1897.

All accounts render- monthly.

The estate of the late Blanche Lacey, deceased, to Joseph Gawler, Dr., funeral director and embalmer, 1734 Pennsylvania avenue between 17th and 18th streets.

Telephone call 131.

Terms —.

April 14. To black-cloth casket, handles, lining and
pillow plate and case..... 80.

38

April 14. To 7 carriages.....	24.50
" hearse.....	6.
" door crepe.....	1.50
" cemetery expenses.....	6.50
" bearers.....	12.00
	130.50
" 23. Received of Miss R. Ferguson on ac.....	80.00
Balance.....	50.50

Paid June 21 1897,

JOSEPH GAWLER,
Per F. GAWLER.

WASHINGTON, —, 1897.

Mrs. Dr. Lacey, 2222 Pa. Ave., bought of J. Maury Dove; main office, corner 21st and I streets N. W.

M'ch 6. To bal. on ac.....	\$54.10
10. " 1 furnace per ton.....	6.00
" " 1 Waston "	6.50
" " $\frac{1}{4}$ kind "	2.13
	68.73
July 12. By cash.....	30.00
	\$38.73

Paid Aug. 9, 1897.

J. MAURY DOVE,
Per ZELLER.

39

WASHINGTON, D. C., April 11, 1898.

Miss R. Ferguson, 2222 Pa. Ave., to James Linskey & Son, Dr., house, sign, and wall painters, grainers, &c.; office, 814 19th street N. W.; residence, 2816 N street N. W.

To ballance of bill rendered.....	\$28.50
Dec. 1, '97. To painting wood-work on front 2222 Penn.	
Ave. & vestibule & porch.....	23.00
Inside of bath-tub.....	3.00
Caining chair.....	.75
	\$55.25

Received payment,

JAMES LINSKEY & SON.

Jan'y 10th. Cr. by cash.....	\$28.50
	JAMES LINSKEY & SON.

WASHINGTON, D. C., July 12th, 1897.

Miss R. Ferguson to James Linskey & Son, Dr., house, sign, and wall painters, grainers, &c.; office, 814 19th street N. W.

To painting exterior wood-work house 2001 I St.

N. W. 10 front windows two cotes.....	\$10.00
" porch & rail.....	5.00
" park fence	5.00
40	
To front & back parlor & hall.....	15.00
" repe-ring lead sash in vestibule.....	2.50
" burning of vestibule painting and varnishing same.....	10.00
" 25 lights glass 40c. per light	10.00
	\$57.50
" 24 windows & blindes two cotes	25.00
" 5 basement windows " "	2.50
" 4 doors & frames " "	4.00
" 4 windows & g-ardes " "	4.00
" roof between parlor & dining-room.....	1.50
" slat door on porch	2.00
" 1 door & gate two cotes	2.00
" weatherbowrding two cotes	3.00
" back porch " " "	3.00
	47.00
	\$104.50
Aug. 3—Cr. by cash \$50.00.....	50.00
Received payment.....	\$54.50
Jan. 4—Cr. by cash " "	25.00
	\$29.50

1897.

Taxes Year Ending June 30.

1897.

Washington city.

Tax \$1.50 per \$100 assessed valuation.

Folio 118.

ASSESSOR'S OFFICE, Aug. 27, 1897.

Robert A. Lacey to the District of Columbia, Dr.

Square.	Lot.	Value of lot.	Value of improvements.	Total assessed value.
78	of 1	\$2122	\$6500	
	" 29	1485		
	" 30	1592		
		(Paid.)		
				\$11699

41	To second half of tax.....	\$87.74
	To penalty of 4 per cent. (for Sept.).....	3.51
Advertising.....		<hr/>
	Total	\$91.25

Received payment,

E. G. DAVIS,
Collector, D. C.

1897. *Taxes Year Ending June 30.* 1897.

Washington city.

Tax \$1.50 per \$100 assessed valuation.

Folio 13.

ASSESSOR'S OFFICE, 11/3, 1897.

Blanche Lacey to the District of Columbia, Dr.

Square.	Lot.	Value of lot.	Value of improvements.	Total assessed value.
54	of S. 19	\$2378 (Paid.)	\$4000	\$6378

To 2nd $\frac{1}{2}$ & balance of 1st $\frac{1}{2}$ of tax.....	\$74.83
To penalty of 6 per cent. on 2nd $\frac{1}{2}$	2.87
Advertising	<hr/>

Total	\$77.70
-------------	---------

Received payment,

E. G. DAVIS,
Collector, D. C.

42 73979. D.

Articles of Incorporation of the Trustees of the Disabled Clergy Fund and of the Episcopal Fund of the Protestant Episcopal Church in the State of Washington.

I. That the Rev. David C. Garrett Phoenix Babcock and Noah B. Coffman do hereby incorporate and associate ourselves to form a body politic under the laws of the State of Washington and in accordance with the authority and power given us by the delegates of the Protestant Episcopal church of the jurisdiction of Washington as herein set forth.

II. That in the proceedings of the eleventh convocation of the Protestant Episcopal church in the missionary jurisdiction of Wash-

ington held in St. Mark's church Seattle June 24, and 24 1891 on the report of the committee on care of funds and valuable property there was among other things adopted the following:

1st. That the trustees provided for in the canon of 1888 should be incorporated under the laws of the State of Washington.

2. That the trustees of the Disabled Clergy fund elected under the provisions of the canon of 1888 shall also be hereafter the trustees of the Episcopal fund.

3. That the above trustees shall be immediately incorporated in accordance with the laws of the State of Washington and that the title of said incorporation shall be the Trustees of the Disabled Clergy Fund and of the Episcopal Fund of the Protestant Episcopal Church in the State of Washington.

43 III. That on the 22d day of September 1892 at the convocation of the Protestant Episcopal church for the jurisdiction of Washington held at Seattle Washington your incorporators Rev. David C. Garrett Phœnix Babcock and Noah B. Coffman were duly elected trustees of the Trustees of the Disabled Clergy Fund and of the Episcopal Fund of the Protestant Episcopal Church in the State of Washington.

IV. The corporate name of said corporation shall be the Trustees of the Disabled Clergy Fund and of the Episcopal Fund of the Protestant Episcopal Church in the State of Washington.

V. That the location and chief place of business of said corporation shall be in the city of Tacoma Pierce county State of Washington.

VI. The terms of admission to membership shall be such as shall be prescribed by the delegates to the convocation of the jurisdiction or diocese of the State of Washington and the persons to act as trustees shall be such as *such as* said delegates see fit to elect.

VII. The object and purpose of said corporation is to receive collect invest pay out and in a safe judicious manner care for and manage the moneys funds and property belonging to said corporation and more particularly known as the fund for the support of the disabled clergy of the jurisdiction or diocese and the fund known as the Episcopal fund of the Protestant Episcopal church of the jurisdiction or diocese of Washington.

44 VIII. The trustees shall be three in number who shall manage the affairs of said corporation and said trustees are empowered to execute any and all instruments necessary and requisite in the transaction of the business of this corporation and said trustees shall be elected at the annual convocation of the Protestant Episcopal church of the jurisdiction or diocese of Washington by the delegates present.

IX. The names of the trustees for the first year of the existence of this corporation are Rev. David C. Garrett Phœnix Babcock and Noah B. Coffman who shall hold as such trustees until the meeting of the convocation of the Protestant Episcopal church of the jurisdiction or diocese of Washington next following the incorporation hereof or until their successors are elected and qualified.

X. The trustees elected by said convocation shall at the time of

holding said convocation or within one month thereafter meet and organize and elect their officers for the ensuing year.

XI. All trustees and officers holding office under the provision of these articles shall hold office for the period or time named herein or until their successors are elected and qualified and the failure to elect trustees at the time designated by these articles of incorporation shall not for that reason work a dissolution of this corporation.

XII. The officers of said company or corporation shall be
 45 a president vice-president secretary and treasurer who shall be elected by the trustees from among their own number and who shall hold office for one year or until their successors are elected and qualified. The foregoing articles of incorporation executed in triplicate this 19th day of October, 1892.

DAVID C. GARRETT. [SEAL.]
 PHOENIX BABCOCK. [SEAL.]
 NOAH B. COFFMAN. [SEAL.]

Witnesses:

A. E. SCHARFF.
 E. O. DARLING.

STATE OF WASHINGTON, } ss:
County of Pierce, }

I, A. E. Scharff, a notary public for the State of Washington do hereby certify that on this 19th day of October 1892 personally appeared before me David C. Garrett Phoenix Babcock and Noah B. Coffman to me known to be the persons who executed the foregoing articles of incorporation and that they signed and sealed the same in triplicate freely and voluntarily for the uses and purposes therein mentioned.

{ Seal of A. E. Scharff, N. P., State of Washington. }
 Exp. of Com., Aug. 24, 1894.

A. E. SCHARFF,
Notary Public in and for the State of Washington,
Residing at Tacoma, Wash.

Given under my hand and official seal this 19th day of October, 1892.

46 STATE OF WASHINGTON, } ss:
County of Pierce, }

I, David C. Garrett, Phoenix Babcock and Noah Coffman do solemnly swear for myself and not for another that I am the person named in and who signed the foregoing articles of incorporation that I am a citizen of the United States and of the State of Washington and that I was duly elected a trustee of the Disabled Clergy Fund and of the Episcopal Fund of the Protestant Episcopal Church of the State of Washington that I will support the Constitution of the United States and the constitution of the State of Washington

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and that I will faithfully and impartially perform the duties of trustee of said corporation to the best of my ability so help me God.

DAVID C. GARRETT.
PHOENIX BABCOCK.
NOAH B. COFFMAN.

Subscribed and sworn to before me this 19th day of October, 1892.

[SEAL.]

A. E. SCHARFF,
Notary Public for the State of Washington,
Residing at Tacoma, Wash.

Filed and recorded at request of N. D. Coffman Oct. 19, A. D. 1892, 2.20 p. m.

W. H. HOLLIS,
Auditor Pierce County, Washington,
By H. H. SWOPE, Dep.

47 STATE OF WASHINGTON, }
County of Pierce, } ss:

I, J. H. Davis, county auditor in and for Pierce county, State of Washington, do hereby certify that the within and foregoing instrument of writing is a full, true and correct copy of articles of incorporation filed for record in this office on the 19th day of October, A. D. 1892 and recorded in Book 6, page 108, articles of incorporation as appears from the record of said instrument now in this office.

In witness whereof, I hereunto set my hand and affix my official seal this 20th, day of February, A. D. 1901.

[SEAL.]

J. H. DAVIS,
County Auditor,
By H. E. ROGERS, Deputy.

(I. R. stamp.)

48 EXHIBIT "ROSALIE FERGUSON, D."

Copy of Canon Relative to the Disabled Clergy Fund Adopted at the Convocation of the Missionary Jurisdiction of Washington, Held May 23, 24, and 25th, 1888, in Seattle, Washington.

Of the disabled clergy fund.

SECTION 1. There shall be three trustees appointed by the convocation to whom the management and care of this fund shall be entrusted, one of whom shall be appointed by the convocation as treasurer thereof. No act of said trustees shall be valid, unless authorized by a resolution adopted at a regular meeting of said trustees, by a majority of the same and recorded in a book to be kept as a record of their proceedings. The said trustees shall hold their offices during the pleasure of the convocation; and all vacancies occurring in said board of trustees, between the meetings of the convocation shall be filled by the appointment of the bishop, or if there

be no bishop, then by the president of the standing committee. Such appointments shall be subject to the action of the next meeting of the convocation.

SECTION 2. In every congregation there shall be annually made, on Christmas day, a collection for this fund ; and it shall be the duty of the minister, of every congregation to give to the same due notice of this collection. And it shall be the duty of the wardens or treasurer of the congregation to forward the same to the treasurer of the fund.

49 SECTION 3. All the appropriations for the relief of disabled clergy shall be made by the trustees, on the certificate of the bishop, or if there be no bishop, then by the president of the standing committee, that the individual has labored within the limits of this jurisdiction for a period of not less than three years, (except in the case of clergymen ordained in this jurisdiction and never having removed therefrom), and is so disabled by infirmity or old age as to need aid. No appropriation shall be made for a larger sum than three hundred dollars per annum, and it shall be paid quarterly, on the first of February, May, August and November.

SECTION 4. All appropriations for the benefit of the widow or children of a deceased clergymen shall be made by the trustees on the certificate of the bishop, or if there be no bishop, then by the president of the standing committee, that the person or persons to be benefitted are the widow or the child or children of a deceased clergymen, who at the time of his death was a canonical resident of this jurisdiction and who had labored for not less than a year within the limits of this jurisdiction, (except in the case of clergymen ordained in this jurisdiction and never having removed therefrom); but no appropriation for this purpose shall be made for a larger sum than three hundred dollars, per annum, the same to be paid quarterly on the first days of February, May, August and November. No appropriation shall be paid to any child who has attained the age of 15 years.

SECTION 5. The trustees shall have power to appropriate a sum not exceeding fifty dollars towards the burial expenses of a deceased clergymen.

50 SECTION 6. All monies belonging to said fund and not needed for early use shall be invested by the trustees in good and safe securities drawing interest. All investments shall be taken and made in the name of the trustees of the fund and their successors in office as trustees of the said fund ; and they shall have power to change the investments from time to time at their discretion.

SECTION 7. A statement of the proceedings of said trustee- omitting the names of the beneficiaries, exhibiting the condition of the fund hereby exhausted to their charge, together with the items or receipts and disbursements, with the vouchers thereof, shall be annually made to the convocation, being signed by the trustees. When such report shall have been made it shall be referred to an auditory committee of three laymen to be appointed by the president of the convocation.

I hereby certify that the above is a true copy of the canon in regard to the disabled clergy fund passed on May 23, 24, and 25, 1888.

(Signed)

RODNEY J. AMEY,
Sec. of Jurisdiction of Olympia.

Signed in presence of
T. H. CANN,
C. G. CURTIN.

STATE OF WASHINGTON, }
County of King, } ss:

I, T. H. Cann, a notary public in and for the State of Washington, do hereby certify that on this 18th day of May, A. D. 1901, 51 personally appeared before me Rodney J. Amey known to be the individual described in and who executed the within instrument, and acknowledged that he signed and sealed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 18 day of May, A. D. 1901.

T. H. CANN,
Notary Public, Residing at Seattle, Washington.

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Stipulation of Facts.

Filed August 21, 1901.

In the Supreme Court of the District of Columbia.

ROSALIE FERGUSON, Plaintiff, }
vs.
ROSALIE FERGUSON, Executrix and Trustee, } In Equity. No. 21524.
et al., Defendants.

Stipulation by and between Rosalie Ferguson, acting in her own behalf and as executrix and trustee under and by virtue of the provisions of the last will and testament of Blanche Lacey, deceased; The Clergymen's Retiring Fund Society of the Protestant Episcopal Church in the United States, a corporation, and the National Safe Deposit, Savings & Trust Company of the District of Columbia, a corporation.

It is this 31st day of July, A. D. 1901, hereby stipulated by and between Rosalie Ferguson, the plaintiff herein and Rosalie Ferguson, as executrix and trustee under and by virtue of the provisions of the last will and testament of Blanche Lacey, deceased; The Clergymen's Retiring Fund Society of the Protestant Episcopal Church in the United States, a body corporate; and The National Safe Deposit, Savings and Trust Company of the District of Columbia, a body corporate, trustee, defendants herein, that this cause may

be calendared for hearing at the October term of the supreme court of the District of Columbia upon the pleadings heretofore filed herein and the following agreed statement of facts which said facts as hereinafter recited shall be received and considered by the court as fully established by competent evidence:

53 1. The defendant, The National Safe Deposit, Savings & Trust Company of the District of Columbia, is a body corporate, duly organized under the laws of the United States and having its principal place of business in the District of Columbia.

2. The paper-writing annexed to the bill of complaint filed in this cause and marked Exhibit "A" is a true copy of the last will and testament of Blanche Lacey, deceased, the original of which said will was duly admitted to probate by the supreme court of the District of Columbia holding a special term for orphans' court business, on the 21st day of November, A. D. 1899, as a valid will to pass both real and personal property. Said copy and the contents thereof shall be received and considered in evidence for all purposes in the course of this trial as fully as though the original had been produced in evidence and solemnly proved.

3. At the date of the death of the said decedent, Blanche Lacey, she owned and possessed the real estate situated in the District of Columbia mentioned and described in the bill of complaint herein filed.

4. The defendant, The Clergymen's Retiring Fund Society of the Protestant Episcopal Church in the United States was duly incorporated under the provisions of the laws of the State of New York and particularly under an act passed by the legislature of the State of New York, April 12, 1848, entitled "An act for the incorporation of benevolent, charitable, scientific and missionary societies" and a

54 certain other act passed by the said legislature entitled "An act relating to membership corporations" constituting chapter 43 of the General Laws of the State of New York. The articles of incorporation of the said society are in the words and figures following, to wit:

STATE OF NEW YORK,
City and County of New York, } ss:

We, Eugene A. Hoffman, of New York city, New York, William G. Farrington of Orange, New Jersey, William W. Holley, of Hackensack, New Jersey, James R. Davenport of New York city, New York; J. Van Vechten Olcott of New York city, New York, Elihu Chauncey of New York city, New York, the undersigned being of full age, and all being citizens of the United States of America, and all residents as above stated, and a majority of whom, to wit, four, are citizens of the State of New York, and residents therein, being desirous of associating ourselves together for the assurance of relief to the clergymen of the Protestant Episcopal church, as is hereinafter more particularly stated, pursuant to and in conformity with an act of the legislature of the State of New York, passed April 12, 1848, entitled "An act for the

incorporation of benevolent, charitable, scientific and missionary societies," and the several acts of the said legislature amendatory thereof and supplemental thereto, including chapter 559 of the Laws of 1895, and entitled "An act relating to the membership corporations" constituting chapter 43 of the General Laws, do hereby certify and declare as follows:—

1. The particular objects for which this corporation is to be formed are as follows: The assurance of relief to the clergymen of the Protestant Episcopal church in the United States of America whose advanced years have a claim to the support of the church and who may sympathize and co-operate with this corporation.

55 2. That the corporate name by which this corporation hereby to be formed shall be known in law and distinguished is and shall be "The Clergymen's Retiring Fund Society of the Protestant Episcopal Church in the United States."

3. The territory in which the operations of this corporation are to be principally conducted is the United States of America.

4. The city in which the principal office of this corporation is to be located shall be and is the city and county of New York.

5. That the number of directors to manage said corporation shall be and is twelve, and that the names and residences of the directors of such corporation until its first annual meeting are as follows: John Scarborough of Trenton, New Jersey; Eugene A. Hoffman of New York city; New York; William G. Farrington of Orange, New Jersey; James R. Davenport of New York city, New York; William W. Holley of Hackensack, New Jersey; Henry Anstice of Rochester, New York; William H. Vibbert of New York city, New York; Cornelius Vanderbilt of New York city, New York; Woodbury G. Langdon of New York city, New York; J. Van Vechten Olcott of New York city, New York; William Bispham of New York city, New York, and Elihu Chauncey of New York city, New York.

6. The times for holding the annual meetings of this corporation shall be the second Thursday in the month of November of each and every year.

56 In witness whereof, we have hereunto set our hands and affixed our seals this 5th day of December, 1895.

EUGENE AUG'S HOFFMAN.

WM. G. FARRINGTON.

WM. WELLES HOLLEY.

JAMES R. DAVENPORT.

J. VAN VECHTEN OLCOTT.

ELIHU CHAUNCEY.

[SEAL.]

[SEAL.]

[SEAL.]

[SEAL.]

[SEAL.]

[SEAL.]

CITY AND COUNTY OF NEW YORK, ss:

On the fifth day of December, eighteen hundred and ninety-five, before me personally came Eugene A. Hoffman, William G. Farrington, William W. Holley, James R. Davenport, J. Van Vechten Olcott, and Elihu Chauncey, all known to me and to me personally

known to be the individuals described in and who executed the foregoing certificate, and they thereupon severally acknowledged to me that they executed the same.

In witness whereof, I have hereunto set my hand and affixed my seal of office this fifth day of December, eighteen hundred and ninety-five.

[SEAL.]

JOHN P. EVERETT,
Notary Public, N. Y. Co.

No. 416.

STATE OF NEW YORK, }
County of New York, } ss:

I, William Sohmer, clerk of said county and clerk of the supreme court of said State for said county, do certify, that I have 57 compared the proceeding with the original certificate of incorporation of the Clergymen's Retiring Fund Society of the Protestant Episcopal Church in the United States on file in my office, and that the same is a correct transcript therefrom and of the whole of such original. Indorsed filed and recorded Dec. 9th 1895, 3 h. 53 m.

In witness whereof, I have hereunto subscribed my name and affixed my official seal this 23 day of Nov., 1900.

[Seal & Revenue Stamp.]

WM. SOHMER.

5. Among the provisions of the above-mentioned act passed April 12, 1848 and of said chapter 43 of the General Laws of the State of New York now in force, is the following, namely.

"Any corporation formed under this act shall be capable of taking, holding or receiving any property, real or personal, by virtue of any devise or bequest contained in any last will or testament of any person whatsoever, the clear annual income of which devise or bequest shall not exceed the sum of ten thousand dollars ; provided, no person leaving a wife or child or parent shall devise or bequeath to such institution or corporation more than one-fourth of his or her estate after the payment of his or her debts, and such devise or bequest shall be valid to the extent of such one-fourth ; and no such devise or bequest shall be valid in any will which shall not have been made and executed at least two months before the death of the testator."

58 It is agreed that any party to this stipulation may upon the hearing of the cause refer to said acts and laws of the State of New York and read any part or all thereof from the printed statute books of said State without notice of his intention so to do and without making proof thereof.

6. The pamphlet copy of the fifth annual report of the Clergymen's Retiring Fund Society of the Protestant Episcopal Church in the United States annexed to this stipulation and marked Exhibit "B" contains a true copy of the report of the president of said so-

ciety to the board of directors thereof for the years 1899-1900 and also a true copy of the treasurer's report for the same period; also a true copy of the fundamental laws of said society, which said fundamental laws were legally adopted and have been in force and effect since the 12th day of April, A. D. 1897. It is stipulated that said copy and all the contents thereof may be received and considered for all purposes in the course of this trial as though the originals thereof had been produced and fully proved in evidence.

7. The testatrix, Blanche Lacey, while domiciled and residing within the District of Columbia, died April 12, 1897, leaving as her next of kin and sole heirs-at-law, the plaintiff, Rosalie Ferguson, and another sister, Kate Ferguson. The said Kate Ferguson died before the filing of the bill of complaint in this cause.

59 The will of the said testatrix, copy of which marked Exhibit "A" is annexed to the bill of complaint filed in this cause and heretofore referred to in paragraph two (2) of this stipulation, bears date March 15, 1897, and was executed publicly and declared by said testatrix to be her last will and testament on the last-mentioned date.

ROSALIE FERGUSON,
By R. ROSS PERRY & SON, *Her Solicitors.*
ROSALIE FERGUSON,
*Executrix and Trustee under the
Will of Blanche Lacey, Deceased,*
By R. ROSS PERRY & SON, *Her Solicitors.*
THE CLERGYMEN'S RETIRING FUND SOCIETY OF THE PROTESTANT EPISCOPAL CHURCH IN THE UNITED STATES,
By F. D. MCKENNEY,
WM. HITZ, *Its Solicitors.*
THE NATIONAL SAFE DEPOSIT, SAVINGS & TRUST COMPANY OF THE DISTRICT OF COLUMBIA,
By JAMES W. GREER, *Its Solicitor.*

Replication.

Filed February 15, 1901.

In the Supreme Court of the District of Columbia.

ROSALIE FERGUSON ET AL., Plaintiff,	vs. Equity. No. 21524.
ROSALIE FERGUSON, Executrix, ET AL., Defendants.	

The plaintiff joins issue with the defendants.

R. ROSS PERRY & SON,
Attorneys for Plaintiff.

Opinion of Justice Bradley.

Filed January 14, 1902.

In the Supreme Court of the District of Columbia.

ROSALIE FERGUSON
vs.
THE NATIONAL SAFE DEPOSIT, SAVINGS & } Trust Co. *et al.* } No. 21524. Equity.

It appears by the record that the complainant and Kate Ferguson her sister, who died in October 1898 were sole next of kin and heirs-at-law of their sister Blanche Lacey, who died in April 1897 leaving a last will and testament which was duly admitted to probate and record by this court, holding a special term for orphans' court business, on November 21, 1899, and letters testamentary were 61 granted to complainant, who with her sister Kate Ferguson were named as executrices.

By the terms of the will certain real estate situated in the city of Washington, in the District of Columbia is devised to the complainant and her sister Kate, and upon the death of the survivor of them it is devised to the defendant savings & trust company upon the following trusts:

"As soon as may be to sell and dispose of the whole of said estate and property, and convert the same into money—and after paying the necessary expenses of the execution of these trusts, to pay over the net proceeds of the sale of said property and any rents or income thereof that may have come into the hands of said trustees and distribute the same as follows:

One-fourth thereof to the corporation known as 'The Trustees of the Disabled Clergy Fund and of the Episcopal Fund of the Protestant Episcopal Church in the State of Washington' to be divided between the said two funds—

The corporation and funds intended being those created for the purposes of the missionary jurisdiction of Olympia which at this time comprises all that part of the State of Washington west of the Cascade range of mountains and of which the Right Reverend William M. Barker D. D. is now missionary bishop and—

Three-fourths thereof to the Clergyman's Retiring Fund Society of the Protestant Episcopal Church in the United States, which society was incorporated under the laws of the State of New York in the year of our Lord 1896."

The complainant qualified as executrix, and has paid all of the debts due by the estate.

The testatrix died within one calendar month after the execution of her last will, and it is claimed that the beneficiaries named are in effect religious orders, and have for their sole object the support and maintenance of aged disabled and retired clergymen of the

Protestant Episcopal church, as such, and therefore the devise to the defendant savings & trust company is void and of no effect.

The complainant alleges that she is sole heir-at-law of
62 Blanche Lacey, and that if such devise is void, she is entitled to the fee of the property given her for life, that as heir-at-law her title has merged the life estate, and the devise to the savings & trust Co. is a cloud upon her title.

She prays for a construction of the will and that the devise to the savings & trust Co. may be declared void. The answer of "The Trustees of the Disabled Clergy Fund and of the Episcopal Fund of the Protestant Episcopal Church in the State of Washington" admits all of the allegations of fact contained in the bill, but not the legal inferences, nor the legal effect of matters of fact stated therein. The answer of "The Clergyman's Retiring Fund Society of the Protestant Episcopal Church of the United States" denies that it is a religious sect or order, or that the devise for its benefit is for the support, use or benefit of a religious order or denomination, or for a minister or preacher of the gospel as such.

The certified copy of the articles of incorporation of the defendant The Trustees of the Disabled Clergy Fund incorporated in the State of Washington, shows that it was organized and incorporated under the authority and direction of the Protestant Episcopal church in the State of Washington, that its object and purpose is to, receive, collect, invest and pay out moneys, funds and property belonging to the corporation, and more particularly known as the fund for the support of the disabled clergy of the jurisdiction or diocese, and the fund known as the Episcopal fund of the Protestant Episcopal church of the jurisdiction or diocese of Washington, and its trustees
63 must be elected at the annual convocation of that denomination in that diocese.

In the stipulation of facts made part of the case is contained a copy of the articles of incorporation of the defendant The Clergyman's Retiring Fund Society incorporated in the State of New York, by which it appears it was formed for the assurance of relief to the clergymen of the Protestant Episcopal church in the United States whose advanced years have a claim to the support of the church, and who may sympathize and co-operate with the corporation. Its benefits are limited by the by-laws to clergymen who have reached the age of sixty years, and who are recognized by the ecclesiastical authorities as ministers of the Protestant Episcopal church of the United States.

It therefore appears that the devise to the savings & trust Co. for the benefit of these beneficiaries is a devise in trust for the support, use or benefit of ministers, public teachers or preachers of the gospel as such. It further appears that the Washington corporation is directly under the management and control of trustees elected at the annual convocation of the church, that it operates a branch of the activities of the church, and handles and manages a portion of its funds collected for this special purpose in the various places of worship, and another portion known as the "Episcopalian fund."

The question first to be answered is whether such a devise is valid under the 34th section of the Maryland bill of rights, as modified by section 457 Rev. Stat. D. C.

64 The section of the bill of rights reads as follows:

"That every gift, sale, or devise of lands, to any minister, public teacher, or preacher of the gospel, as such, or to any religious sect, order or denomination, or to or for the support, use or benefit of, or in trust for, any minister, public teacher, or preacher of the gospel, as such, or any religious sect, order of denomination; and every gift, or sale of goods or chattels, to go in succession, or to take place after the death of the seller or donor, to or for such support, use or benefit; and also every devise of goods or chattels to, or to or for the support, use or benefit of, any minister, public teacher or preacher of the gospel, as such, or any religious sect, order or denomination, without the leave of the legislature, shall be void; except always any sale, gift, lease or devise, of any quantity of land not exceeding two acres, for a church meeting or other house of worship, and for a burying ground, which shall be improved, enjoyed or used, only for such purpose, or such sale, gift, lease or devise shall be void."

Section 457 R. S. D. C. is the act of July 25, 1866 and is as follows:

"The thirty-fourth section of the declaration of rights of the State of Maryland, adopted seventeen hundred and seventy-six, so far as the same was recognized and adopted in the District prior to July twenty-fifth, eighteen hundred and sixty-six, is repealed and annulled, and all sales, gifts, and devises prohibited by said section, or by any law passed in accordance therewith, are when made, valid and effectual: Provided that, in case of gifts and devises, the same shall be made at least one calendar month before the death of the donor or testator."

The direction contained in the will is to sell the property as soon as may be after the death of the tenants for life, convert the same into money and pay over the net proceeds to the two beneficiaries. The sole purpose of the conversion is, apparently, however, to enable the beneficiaries to conveniently realize their proportionate interests out of the property devised. These beneficiaries, therefore, would have the right jointly to exercise an election to take the property instead of the proceeds of its sale.

65 Lewin on Trusts 953.

The devise in such event would necessarily be treated as one of land. But whether money or land, the devise appears to be void under the recited section of the Maryland bill of rights, and section 457 Rev. Stat. D. C. unless the word "any" as used in the section of the bill of rights includes only a devise in trust for the use or benefit of, or a devise direct to, one minister of the gospel, as such, and excludes a devise in trust for or directly to several. Obviously the word any must be construed to apply equally to one, or to any number of persons who together come within the description.

Spurgeon vs. Hennessey, 32 Mo. App. 83.

County of Chicot v. Lewis 103 U. S. 164.

I am of opinion therefore that the devise is void.

An additional ground in support of the contention that the devise for the benefit of the Washington corporation is void, is that the trust is so indefinite that it cannot be enforced. It is made to the corporation named "to be divided between the said two funds" presumably meaning "the disabled clergy fund" and the "Episcopal fund" forming part of the corporate name. This alone would seem to fall far short of defining beneficiaries who would be capable of enforcing by proceedings in a court of proper jurisdiction the trust that would be impressed upon the money when paid over to that corporation, for manifestly the devise or bequest is not to the corporation for its own use generally, but in trust to be applied in equal shares to "two funds." This uncertainty is increased by the explanation immediately following and constituting part of the

clause, which reads: "The corporation and funds intended
66 being those created for the purposes of the missionary jurisdiction of Olympia which at this time comprises all that part of the State of Washington west of the Cascade range of mountains, and of which the Right Reverend William M. Barker D. D. is now missionary bishop."

I am of the opinion that the devise or bequest to, or for the benefit of this corporation is also void, because of the uncertainty and indefiniteness of the beneficiaries.

Church Extension of M. E. Church et al. vs. Smith, 56 Md.
362, 396.

Kain v. Gibboney 101 U. S. 368.

An additional ground urged in support of the contention that the devise or bequest is invalid in so far as it is for the benefit of or to the New York corporation is that this corporation is prohibited by the provisions of its charter from taking or receiving it.

One of the provisions of the New York statute of April 12, 1848, sec. 6, under which it was incorporated reads as follows:—

"Any corporation formed under this act shall be capable of taking, holding or receiving any property, real or personal, by virtue of any devise, or bequest contained in any last will or testament of any person whatsoever, the clear annual income of which devise or bequest shall not exceed the sum of ten thousand dollars; provided, no person leaving a wife or child or parent shall devise or bequeath to any such institution or corporation more than one-fourth of his or her estate after payment of his or her debts, and such devise or bequest shall be valid to the extent of such one-fourth; and no such devise or bequest shall be valid in any will which shall not have been made and executed at least two months before the death of the testator."

The whole of this section except the last clause is manifestly a limitation upon the power of corporations formed under that
67 act to take, hold or receive property by devise or bequest. It is not a statute of wills.

The last clause appears to be equally so, and it has been held by the courts of that State that this clause is simply aimed at devises

and bequests made to such corporations, which, if made within the prescribed time are invalid because beyond the power of the corporation to take, no matter whether the testator be domiciled within the State of New York or elsewhere.

Hollis v. Drew Theol. Seminary 95 N.Y. 191.

Chamberlain v. Chamberlain 43 " 424.

Lefevre v. Lefevre 59 " 434.

Kerr vs. Dougherty 79 " 327.

Stephenson vs. Short 92 " 433.

Pritchard v. Kirch. M'ch term 1901, 1st Dep. App. Div. Sup. Ct. N. Y.

The interpretation given this clause by the highest court of the State must be followed in determining the power of a corporation organized under the statute to take property devised to it within two months before the death of the testator, and following the decisions of the Court of Appeals, the conclusion must be that so much of the devise or bequest that is to, or for, the benefit of this corporation is invalid.

The objection that this restriction or inhibition cannot be taken advantage of by the heir-at-law, or the next of kin, but can be enforced only by a proceeding by the State is untenable. It is unlike the case of power in the corporation to take and receive to a certain amount, and a claim asserted that a devise to it exceeds the statutory limit, in which case, according to high authority, the State alone by a direct proceeding can question the right.

Jones vs. Habersham 107 U. S. 174, 188.

68 *Hanson v. Little Sisters &c.* 79 Md. 454.

Farrington v. Putnam 90 Me. 405.

Here there is no power to take, the devise is void, no title would vest in the corporation, and the heir-at-law whose title is clouded by the devise may assert her right in a proceeding to remove the cloud.

In re McGraw's Estate 111 N. Y. 66 and cases cited in the opinion of the court.

I am of the opinion that the devise is invalid upon the ground alleged, as in contravention of the recited statute of New York.

The object and purpose of the trust to the savings & trust company being only the sale of the property and its conversion into cash so that the proceeds might be paid over in certain proportions to the beneficiaries, and such provisions of the will for the benefit of the named beneficiaries being void for the reasons stated, no conversion of the realty is effected, but it descends to the complainant as heir-at-law.

Orrick v. Boehm 49 Md. 72. 104-106.

Read v. Williams 125 N. Y. 571.

McHugh v. McCole 96 Wis. 166.

The complainant is entitled to the decree prayed.

A. C. BRADLEY, *Justice.*

January 14, 1902.

69

Decree, &c.

Filed January 20, 1902.

In the Supreme Court of the District of Columbia.

ROSALIE FERGUSON, Plaintiff,
vs.
ROSALIE FERGUSON, Executrix and Trustee,
et al., Defendants. } Equity. No. 21524.

The above-entitled cause coming on to be heard at the present term of the court upon the bill of complaint filed therein, the answers filed thereto by the defendants and the testimony taken therein and upon the arguments by counsel and the same having been considered by the court, it is this 20th day of January, 1902, adjudged, ordered and decreed as follows:—

1. That the devise contained in the last will and testament of Blanche Lacey, deceased, to the defendant, The National Safe Deposit, Savings and Trust Company of the District of Columbia, upon the trusts declared by the said will, is null and void, and that none of the property, real or personal, of which the above-mentioned Blanche Lacey died possessed, is vested either in law or in equity in the said defendant, The National Safe Deposit, Savings and Trust Company of the District of Columbia or in the defendant, The Trustees of the Disabled Clergy Fund and of the Episcopal Fund of the Protestant Episcopal Church in the State of Washington, a body corporate, or in the defendant, The Clergyman's Retiring Fund Society of the Protestant Episcopal Church in the United States, a body corporate:

70 2. That Rosalie Ferguson, the plaintiff in the above-entitled cause, is seized and possessed of all of the real estate of which the aforesaid Blanche Lacey, deceased, was seized and possessed at the time of her death in her own right as heir-at-law of the said Blanche Lacey.

3. That the said defendant, The National Safe Deposit, Savings and Trust Company of the District of Columbia, and the said defendant, The Trustees of the Disabled Clergy Fund and of the Episcopal Fund of the Protestant Episcopal Church in the State of Washington and the said defendant, The Clergyman's Retiring Fund Society of the Protestant Episcopal Church in the United States, be and they and each of them hereby are perpetually enjoined from claiming or asserting any title either at law or in equity to any of the property real or personal of which the above-mentioned Blanche Lacey died seized or possessed, by virtue of any provision of the aforesaid will of Blanche Lacey, deceased.

A. C. BRADLEY, *Justice.*

71

Appeal:

Filed February 3, 1902.

In the Supreme Court of the District of Columbia.

ROSALIE FERGUSON, Plaintiff,
vs.

ROSALIE FERGUSON, Executor and Trustee; The National Safe Deposit, Savings and Trust Company of the District of Columbia, a Body Corporate, Trustee; The Trustees of the Disabled Clergy Fund and of the Episcopal Fund of the Protestant Episcopal Church in the State of Washington, a Body Corporate, and The Clergyman's Retiring Fund Society of the Protestant Episcopal Church in the United States, a Body Corporate, Defendants.

In Equity. No. 21524.

Now comes the defendant, The Clergyman's Retiring Fund Society, one of the defendants in the above-entitled cause, by its solicitors, and appeals to the Court of Appeals from the decree of the supreme court of the District of Columbia entered herein on the 20th day of January, A. D. 1902.

F. D. MCKENNEY,
WM. HITZ,*Solicitors for the Defendant The Clergyman's
Retiring Fund Society.*

Citation waived:

R. ROSS PERRY & SON.

72

Order Granting Severance.

Filed February 11, 1902.

In the Supreme Court of the District of Columbia.

ROSALIE FERGUSON, Plaintiff,
vs.

ROSALIE FERGUSON, Executrix and Trustee; The National Safe Deposit, Savings and Trust Company of the District of Columbia, a Body Corporate, Trustee; The Trustees of the Disabled Clergy Fund and of the Episcopal Fund of the Protestant Episcopal Church in the State of Washington, a Body Corporate, and The Clergyman's Retiring Fund Society of the Protestant Episcopal Church in the United States, a Body Corporate, Defendants.

In Equity. No. 21524.

Upon consideration of the motion of The Clergyman's Retiring Fund Society, one of the defendants herein, it is this 11th day of

February, 1902, by the court ordered, adjudged and decreed that the defendant, The Clergyman's Retiring Fund Society, be and it hereby is severed from the other defendants herein, and allowed to prosecute severally its appeal to the Court of Appeals.

A. B. HAGNER, *Justice.*

73

Memorandum.

February 11, 1902.—Appeal bond—filed.

Instructions for Preparation of Record.

Filed February 13, 1902.

FERGUSON }
vs. }
FERGUSON. } Equity, No. 21524.

FEBRUARY 13, 1902.

John R. Young, Esqr., clerk supreme court, D. C.

DEAR SIR: I shall be obliged if you will make up the record in the Court of Appeals in the above-entitled case, and include therein the following papers:

1. The original bill of complaint (with which the will of Mrs Lacey is filed as an exhibit).
 2. Answer of the National Safe Deposit, Savings & Trust Company.
 3. " of the Disabled Clergy Fund.
 4. " " Clergyman's Retiring Fund Society.
 5. Testimony of Rosalie Ferguson.
 6. Stipulation between the parties to the cause.
 7. Decree of the court below.
 8. Opinion of Bradley, justice.
 9. Order of severance to the Clergyman's Retiring Fund Society.

74 10. Appeal to the Court of Appeals.

Yours very truly,
F. D. McKENNEY,
H.,

Attorney for Clergyman's R. F. S., Appellants.

Instruction to Clerk by Appellee for Preparation of Record.

Filed February 19, 1902.

R. Ross Perry and Son, attorneys-at-law.

WASHINGTON, D. C., Feb. 16, 1902.

John R. Young, Esq., clerk supreme court D. C.

DEAR SIR: You will please have printed as part of the record in the case of Ferguson *vs.* Ferguson *et al.*, equity No. 21,524, the following papers in addition to those ordered by the appellant; 1st, the replication; 2nd, the exhibits referred to and made part of the

stipulation between the parties to the cause; 3rd, copy of the articles of incorporation of the Disabled Clergy Fund; 4th, canon of the convocation of 1888 introduced in evidence in the cause.

Very truly yours,

R. ROSS PERRY & SON.

R. C.

75 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, }
District of Columbia, } ss:

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 74, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copies of which are made part of this transcript, in cause No. 21524, equity, wherein Rosalie Ferguson is complainant, and Rosalie Ferguson, executrix and trustee, *et al.*, are defendants, is the same remains upon the files and of record in said court.

Seal Supreme Court
of the District of
Columbia.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 24 day of February, A. D. 1902.

JOHN R. YOUNG, Clerk.

Endorsed on cover: District of Columbia supreme court. No. 1204. The Clergyman's Retiring Fund Society of the Protestant Episcopal Church of the United States, a body corporate, appellant, vs. Rosalie Ferguson. Court of Appeals, District of Columbia. Filed Apr. 11, 1902. Robert Willett, clerk.